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Attorney for Plaintiff:
Carlos Martinez

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CARLOS MARTINEZ,

Plaintiff,

vs.

GILA LLC dba MUNICIPAL SERVICES
BUREAU, and DOES 1-10.

Defendants.

Case No.

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

I. INTRODUCTION

1. Defendant Gila LLC made repeated calls to Plaintiff Carlos Martinez's cell phone in an attempt to collect an alleged debt. Defendant called plaintiff's cell phone using an automatic telephone dialing system and used an artificial or prerecorded voice without his prior consent. Martinez demanded that defendant stop calling him, but defendant ignored his request and kept making repeated calls. Defendant has a business plan and practice of engaging in the unlawful conduct described herein.

2. According to findings made by Congress and echoed by the Federal Communications Commission, the type of calls that defendant made to Plaintiff are prohibited because automated calls or the use of an artificial or prerecorded voice are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be

1 costly and inconvenient¹. Just a week ago the FCC adopted a proposal under the Telephone
2 Consumer Protection Act designed to further protect consumers against unwanted robocalls
3 and “affirmed a consumers right to control the calls they receive.”²”

4 3. As a result of defendant’s unlawful acts and omissions Martinez’s privacy has been
5 invaded, he has suffered emotional distress, including nervousness, anger, fear, stress, and head
6 aches, among other negative emotions and damages.

7 **II. FACTS**

8 4. Martinez is a longtime resident of Monterey County. He allegedly incurred money
9 fines related to traffic tickets in the County of Monterey. He began making payments directly
10 to the County of Monterey.

11 5. Even though he was making payments he began receiving unsolicited calls from
12 defendant in an attempt to collect on the fines within the last four years. Defendant used an
13 artificial or pre-recorded voice when making the phone calls to his cell phone and an
14 automatic dialing system. Defendant never obtained Martinez’s consent to make any
15 telephone calls using an automatic telephone dialing system or an artificial or prerecorded
16 voice. Frustrated, Martinez demanded that defendant stop calling him.

17 6. Then, on or about June 26, 2013, Martinez sent a letter to defendant demanding that it
18 stop calling him, but the calls continued.

19 7. In the fall of 2014, Plaintiff paid off the fines that he had been paying directly to the
20 County of Monterey. However, the calls from defendant continued leading Martinez to file suit.

21 8. The defendant’s day to day activities include attempting to collect debts from
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23 ¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG
24 Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

25 ² [https://www.fcc.gov/document/fcc-strengthens-consumer-protections-against-unwanted-](https://www.fcc.gov/document/fcc-strengthens-consumer-protections-against-unwanted-calls-and-texts)
26 [calls-and-texts](https://www.fcc.gov/document/fcc-strengthens-consumer-protections-against-unwanted-calls-and-texts)
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1 consumers via use of the phone and mail.

2 9. Defendant's calls were repeated and continuous and were with such frequency as to
3 be unreasonable and constitute harassment under the circumstances. The calls were intentionally
4 made in a campaign of harassment.

5 10. Defendant has a business plan and practice of engaging in the unlawful conduct
6 described herein.

7 11. Defendant used an automatic telephone dialing system and used a prerecorded voice
8 and artificial voice to telephone Martinez's cellular telephone in the last four years. At all times
9 relevant to this complaint, defendant used, controlled, and/or operated "automatic telephone
10 dialing systems" and "artificial or prerecorded voice" as defined by the TCPA, 47 U.S.C. § 227
11 et.seq., and 47 C.F.R. § 64.1200 et.seq.

12 12. As a result of defendant's unlawful acts and omissions Martinez's privacy has been
13 invaded, he has suffered emotional distress, including nervousness, anger, fear, stress, and head
14 aches, among other negative emotions and damages.

15 **III. JURISDICTION AND PARTIES**

16 13. Jurisdiction of this Court arises under 28 U.S.C. §1331, 28 U.S.C. §1337, 47 U.S.C.
17 §227, and supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367.

18 14. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b), in that a
19 substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

20 15. Carlos Martinez ("Martinez or Plaintiff") is over the age of 18 and is a resident of
21 Monterey County.

22 16. On information and belief, Defendant Gila LLC., dba Municipal Services Bureau is a
23 foreign business corporation doing business in California. Defendant in the ordinary course of
24 business, regularly attempts to collect debts owed to another. During the relevant time period,
25 defendant was contracted by the County of Monterey to collect on accounts that the County of
26 Monterey transferred to defendant for collection.

27 17. Defendants Does 1 through 10 are persons or entities whose true names and capacities
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are presently unknown to Plaintiff, and who therefore are sued by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants perpetrated some or all of the wrongful acts alleged herein, is responsible in some manner for the matters alleged herein, and is jointly and severally liable to Plaintiff. Plaintiff will seek leave of court to amend this complaint to state the true names and capacities of such fictitiously named defendants when ascertained.

18. At all relevant times, the conduct of each defendant named above, as well as that of its agents, servants and/or employees, was malicious, intentional, willful, reckless, in conscious disregard for the rights of others, and in grossly negligent disregard for federal and state laws and the rights of Martinez.

19. At all times mentioned herein, each defendant and employee of defendant named above was the agent or employee of each of the other defendants and was acting within the course and scope of such agency or employment and under direct supervision and control of each defendant. The defendants are jointly and severally liable to Plaintiff. Defendant approved, authorized and/or ratified the wrongful acts and omissions herein.

IV. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **TELEPHONE CONSUMER PROTECTION ACT**

20. Plaintiff repeats the foregoing paragraphs as if fully reinstated herein.

21. At all relevant times to this complaint, the Plaintiff was and is a “person” as defined by the TCPA 47 U.S.C. §153(32).

22. At all times relevant times to this complaint, the defendant owned, operated, and or controlled “customer premises equipment” as defined by the TCPA 47 U.S.C. § 153(14) that originated, routed, and/or terminated telecommunications.

23. The defendant at all times relevant to the complaint herein engages in “telecommunications” defined by the TCPA U.S.C. § 153(43).

24. The defendant at all times relevant to the complaint herein engage in “interstate

1 telecommunications” defined by the TCPA U.S.C. § 153(43).

2 25. At all relevant times to this complaint, the defendant used, controlled, and/or operated
3 “wire communications” as defined by the TCPA 47 U.S.C. § 153(52), that existed as
4 instrumentalities of interstate and intrastate commerce.

5 26. At all times relevant to this complaint, defendant used, controlled, and/or operated
6 “automatic telephone dialing systems” and “artificial or prerecorded voice” as defined by the
7 TCPA, 47 U.S.C. § 227 et.seq., and 47 C.F.R. § 64.1200 et.seq.

8 27. Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 et.seq.,
9 by using an “automatic telephone dialing system” and using an “artificial or prerecorded voice” to
10 telephone Plaintiff’s cellular phone without Plaintiff’s consent.

11 28. Defendant’s violations were willful and knowing.

12 29. As a result of these violations of the TCPA, defendant is liable to Plaintiff for
13 statutory damages, including treble damages.

14 30. Defendant engaged in willful and knowing violations of 47 U.S.C. § 227 et.seq.

15 31. Defendant acted with oppression, fraud, and/or malice, thereby entitling Plaintiff to
16 punitive damages in an amount according to proof and a finder of fact at trial.

17 32. Plaintiff is entitled to recover actual damages, attorney fees, costs and punitive
18 damages.

19 **SECOND CLAIM FOR RELIEF**
20 **INTRUSION UPON SECLUSION**

21 33. Plaintiff repeats the foregoing paragraphs as if fully reinstated herein.

22 34. Defendant’s acts described herein constitute an invasion of the Plaintiff’s privacy
23 and an intrusion upon his right of seclusion.

24 35. Plaintiff has a reasonable expectation of privacy in his solitude, seclusion and/or
25 private affairs.

26 36. Defendant’s abusive and improper collection practices in the collection of the
27 debt, including calling Plaintiff after he asked that all calls stop and the use of an automatic
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1 telephone dialing system and the use of artificial or prerecorded voices without Plaintiff's
2 consent constituted an invasion of Plaintiff's seclusion and privacy, and would be highly
3 offensive to a reasonable person.

4 37. Defendant intended to cause emotional distress, and/or engaged in reckless
5 disregard of the probability of causing Plaintiff emotional distress.

6 38. As a proximate result of Defendants conduct, Plaintiff has suffered damages in an
7 amount to be determined by proof and finder of fact at trial.

8 39. Defendants acted with oppression, fraud, and/or malice, thereby entitling Plaintiff
9 to punitive damage in an amount according to proof and a finder of fact at trial.

10 **THIRD CLAIM**
11 **NEGLIGENT TRAINING AND SUPERVISION**

12 40. Plaintiff repeats the foregoing paragraphs as if fully reinstated herein.

13 41. Defendant negligently trained and supervised their employees and agents as to the
14 performance of their job duties and as a result of such negligent instruction and supervision, the
15 employees/agents while carrying out their job duties caused injury and damage to Plaintiff.

16 42. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff has
17 suffered damages in an amount to be determined at trial.

18 43. Defendant acted with oppression, and/or malice, thereby entitling Plaintiff to punitive
19 damages in an amount to be determined at trial. Defendants acted in a despicable manner and
20 acted with a conscious disregard to the rights of Plaintiff.

21 **FOURTH CLAIM**
22 **CALIFORNIA BUS. & PROF. CODE § 17200**

23 44. Plaintiff repeats the foregoing paragraphs as if fully reinstated herein.

24 45. Defendant's unlawful business acts and/or practices as alleged herein have
25 violated numerous laws and/or regulations and said predicate acts are therefore per se
26 violations of Bus. and Prof. Code § 17200 et seq. These predicate unlawful business acts
27 and/or practices include Defendant's unlawful and intrusive collection practices and
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1 telephone conduct in violation of federal law as described above. Business and Professions
2 Code 17200-17205 prohibits business acts and practices that are unlawful, unfair and
3 deceptive.

4 46. Defendant's acts and practices alleged above constitute unlawful, unfair and
5 deceptive business practices.

6 47. Plaintiff is entitled to injunctive relief against Defendant for its unlawful,
7 unfair, and deceptive acts and practices as provided by Bus. & Prof. Code 17203.

8 48. Defendant's unlawful, unfair and deceptive business practices present a
9 continuing threat in that Defendant is currently engaging in such acts and practices and will
10 persist and continue to do so unless and until an injunction is issued by this Court. As such,
11 pursuant to Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining Defendant from
12 engaging in the acts and business practices as described above.

13 49. Plaintiff has suffered injury in fact and has lost money or property as the result
14 of the unfair competition and business practice. Plaintiff suffered an invasion or injury to a
15 legally protected interest, and had incurred an out of pocket loss, including U.S. certified
16 mailing fees and other losses.

17 **VI. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for the following relief:

- 19 1. For compensatory, actual damages, statutory damages, injunctive relief and punitive
20 damages;
- 21 2. Statutory and treble damages pursuant to the TCPA;
- 22 3. Injunctive relief pursuant to 47 U.S.C. 227(b)(3)(A);
- 23 4. Punitive damages pursuant to Civil Code §3294;
- 24 5. For an award of attorneys' fees, costs and expenses incurred in the investigation,
25 filing and prosecution of this action pursuant to Code of Civ. Proc. §1021.5 and any
26 other applicable provisions of law;
- 27 6. For prejudgment interest to the extent permitted by law; and
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1 7. For such other and further relief as the Court may deem just and proper.

2 Respectfully submitted,

3 Dated 6/24/2015

4 /s/ Balam O. Letona

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6 Balam O. Letona, Esq.
Attorney for Plaintiff

7 **DEMAND FOR JURY TRIAL**

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9 PLEASE TAKE NOTICE that Plaintiff Carlos Martinez hereby demands a trial by jury of all
10 triable issues of fact in the above-captioned case.

11 /s/ Balam O. Letona

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Balam O. Letona, Esq.